

### **REMARKS/ARGUMENTS**

Claims 1, 3-4, 7-9, 11-12, 14-29, 36-39 and 41 remain in this application. Claims 19, 21 and 36-39 are amended. Claim 10 is cancelled and claim 41 is added in lieu thereof.

The Examiner has acknowledged that claims 1, 3-4, 7-9, 11-12, 14-18, 20 and 22-29 are directed to allowable subject matter.

Page 9, line 17, of the specification is amended to capitalize “GenBank” and to accompany it by generic terminology.

Claims 19 and 21 are amended to indicate that the host cells are recombinant host cells.

New claim 41 includes the subject matter of cancelled claim 10.

### **Specification/Claim Objections**

The paragraph starting at line 16 on page 9 of the specification is amended to capitalize “GenBank” and to accompany it with generic terminology.

Claims 10 was objected to for improperly depending from a non-preceding claim. Claim 10 is cancelled and its subject matter is included in new claim 41.

Withdrawal of the objections is respectfully requested.

### **Rejection under 35 U.S.C. § 101**

Claims 19 and 21 were rejected under 35 U.S.C. 101. Applicant has amended claims 19 and 21 to define the host cells as “transgenic host cells.” Applicant submits that transgenic cells are not directed to naturally occurring host cells.

Withdrawal of the rejection of claims 19 and 21 under Section 101 is respectfully requested.

**Rejection under 35 U.S.C. § 112**

Claims 36-39 were rejected under 35 U.S.C. 112, first paragraph. The Examiner stated that these claims contain the limitation “at least 20 contiguous nucleotides” which is allegedly not adequately described in the specification. Applicant respectfully disagrees with the Examiner’s objection as this phrase is not present in any of the pending claims.

Claims 36-39 recite the phrase “20 contiguous nucleotides.” This statement is adequately support by the specification. Examples of six nucleic acid sequences each comprising 20 nucleotides that may be used within these methods are provided (see page 28, lines 1-5). Therefore, the phrase “20 contiguous nucleotides” is not new matter and is clearly disclosed within the specification as filed. One of skill in the art may easily use the teachings of the present description and use alternate sequences within the 87 base pair region identified (nucleotides 1524-1610 of SEQ ID NO:2) to differentiate the *EpEp* and *epep* genotypes using the methods disclosed and defined in claims 36-39.

Withdrawal of the rejection of claims 36-39 under Section 112 is respectfully requested.


**Rejection under 35 U.S.C. § 102**

Claims 19 and 21 were rejected under 35 U.S.C. 102 as being anticipated by Gijzen et al. (Plant Physiol. 103:1061-1066, 1993). Applicant has amended claims 19 and 21 to define the host cells as “transgenic host cells.” Applicant submits that transgenic cells are not disclosed by Gijzen et al.

Withdrawal of the rejection of claims 19 and 21 under Section 102 is respectfully requested.

It is respectfully submitted that the above-identified application is in condition for allowance and favourable reconsideration and prompt allowance of these claims are respectfully requested. Should the Examiner believe that anything further is desirable in order to place the application in better condition for allowance, the Examiner is invited to contact the Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted

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